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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE SUSAN ILLSTON, JUDGE

UNITED STATES OF AMERICA,)

PLAINTIFF,)

VS.)

DANIEL DAVID,)

DEFENDANT.)

COPY

NO. CR 02-0062 SI

THURSDAY, MARCH 4, 2004

SAN FRANCISCO, CALIFORNIA

TESTIMONY OF DANIEL DAVID

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF:

KEVIN V. RYAN
UNITED STATES ATTORNEY
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

BY: MATTHEW JACOBS,
MARK C. PARRENT,
ASSISTANT UNITED STATES ATTORNEYS

FOR DEFENDANT:

FOLEY & LARDNER
ONE MARITIME PLAZA, SIXTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111

BY: THOMAS F. CARLUCCI, ESQUIRE
RUSSELL L. CARLBERG, ESQUIRE

REPORTED BY:

DIANE E. SKILLMAN, CSR 4909
OFFICIAL COURT REPORTER

1 A. THAT'S CORRECT.

2 Q. BUT YOU DID KNOW THAT YOU WERE CALLING 800 NUMBERS, OF
3 COURSE?

4 A. YES, I DID.

5 Q. AND YOU KNEW THAT LONG DISTANCE CARRIERS CHARGE THEIR
6 CUSTOMERS FOR 800 NUMBER CALLS THAT THEY RECEIVED, CORRECT?

7 A. THAT'S CORRECT.

8 Q. AND WHEN WE HEARD SOME OF THE WITNESSES FROM SPRINT AND
9 AT&T, MR. CARLUCCI ASKED THEM IN CROSS-EXAMINATION, DID THEY
10 RETURN THE MONEY THAT THEY GOT WHEN THEY STOPPED PAYMENT ON
11 YOUR CHECKS TO THE VICTIMS.

12 DO YOU REMEMBER THOSE QUESTIONS?

13 A. YEAH.

14 Q. AND DID YOU AGREE WITH MR. CARLUCCI THAT SPRINT AND AT&T
15 SHOULD HAVE TAKEN THAT MONEY AND GIVEN IT BACK TO THE OWNERS OF
16 THE 800 NUMBERS?

17 A. YEAH. I MEAN, SURE. YES, I DO.

18 Q. BECAUSE THE MONEY DIDN'T BELONG TO AT&T OR SPRINT, CORRECT?

19 A. THAT'S ABSOLUTELY CORRECT.

20 Q. IT REALLY BELONGED TO THE OWNERS OF THE 800 NUMBERS?

21 A. THAT'S RIGHT.

22 Q. NOW, YOU ARE AWARE, WERE YOU NOT, THAT EVERY TIME YOU
23 PROGRAMMED THE AUDISYS MACHINE TO MAKE A TELEPHONE CALL, THAT
24 SOMEONE WOULD BE BILLED 26 CENTS AT THE OTHER END?

25 A. YES.

1 Q. AND YOU ARE AWARE THOSE PEOPLE HAD NO WAY OF GOING BACK TO
2 THE PHONE COMPANY AND SAYING, WE RECEIVED A BOGUS CALL, CAN YOU
3 GIVE US OUR 26 CENTS BACK, RIGHT?

4 A. CORRECT.

5 Q. NOW, YOU AGREE THAT OWNERS OF 800 NUMBERS HAVE NOT DONE
6 ANYTHING WRONG?

7 A. NO, OF COURSE NOT.

8 Q. I UNDERSTAND YOU HAVE A BEEF WITH AT&T AND SPRINT AND SOME
9 OF THE LONG DISTANCE CARRIERS, CORRECT?

10 A. THAT'S CORRECT.

11 Q. AND AS I UNDERSTAND IT, THAT WAS YOUR MOTIVATION FOR
12 CARRYING OUT THIS PARTICULAR VENTURE, RIGHT?

13 A. THAT'S CORRECT.

14 Q. YOU HAVE NO BEEF WITH 800 NUMBER OWNERS, RIGHT?

15 A. AS LONG AS AT&T DOESN'T OWN THEM, BUT YES.

16 Q. LET'S PUT ASIDE AT&T'S OWNERSHIP.

17 ASSUMING IT'S A SMALL BUSINESS OR A LARGE
18 BUSINESS --

19 A. I AGREE WITH YOU, MR. JACOBS.

20 Q. OKAY. AND THEY DIDN'T DO ANYTHING TO CHEAT YOU?

21 A. NO.

22 Q. WOULD YOU AGREE WITH THE CHARACTERIZATION THOSE PEOPLE ARE,
23 IN FACT, INNOCENT VICTIMS?

24 A. I WOULD SAY THEY ARE VICTIMS -- I MEAN, I WOULD SAY THEY
25 ARE INNOCENT. EXCUSE ME. INNOCENT VICTIMS? OKAY.

1 Q. OKAY.

2 WELL, LET'S DO A LITTLE MATH. YOU MADE WELL MORE
3 THAN 2 MILLION CALLS, CORRECT?

4 A. THAT'S CORRECT.

5 Q. APPROXIMATELY HOW MANY CALLS DID YOU MAKE THEN?

6 A. IT'S SAFELY BETWEEN TWO AND TWO AND A HALF MILLION, BUT I
7 DON'T KNOW THE EXACT NUMBER.

8 Q. OKAY. WELL, LET'S TAKE 2 MILLION --

9 A. OKAY.

10 Q. -- AS THE FIGURE.

11 AT 23 CENTS A CALL, THAT'S HALF A MILLION DOLLARS,
12 APPROXIMATELY?

13 A. APPROXIMATELY, YES.

14 Q. I TAKE IT THEN THAT YOU WOULD AGREE WITH ME THAT AS A
15 RESULT OF THE ACTIONS THAT YOU AND MR. NISBET TOOK, YOU CAUSED
16 LOSSES OF HALF A MILLION DOLLARS TO INNOCENT PEOPLE?

17 A. YES. OKAY.

18 Q. AND I GUESS MY QUESTION TO YOU, SIR, IS, WAS THAT SOMETHING
19 THAT YOU THOUGHT ABOUT AT ANY TIME DURING THE TWO-YEAR PERIOD
20 THAT YOU WERE CARRYING OUT THIS SCHEME WITH MR. NISBET?

21 A. I KNOW WE ADDRESSED THAT. ABSOLUTELY.

22 Q. YOU ADDRESSED IT IN SUCH A WAY AS TO GIVE THOSE PEOPLE
23 THEIR MONEY BACK? OR YOU THOUGHT ABOUT IT?

24 A. I THINK THE LONG-TERM GOAL WAS TO DO SOMETHING WITH THE
25 INFORMATION THAT WE DERIVED.